Supreme Court of the United States

October Term, 1945

No. 248

WILLIAM I. HEFFRON, Trustee of the Estate of William Nelson Hamaker, Bankrupt,

Petitioner,

vs.

WILLIAM NELSON HAMAKER,

Respondent,

WILLIAM I. HEFFRON, Trustee of the Estate of Orelia B. Hamaker, Bankrupt,

Petitioner,

vs.

ORELIA B. HAMAKER,

Respondent.

RESPONDENTS' BRIEF IN OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI.

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RESPONDENTS' BRIEF IN OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI.

The brief filed herein in behalf of petitioner in support of his petition for a writ of certiorari fails to comply with the rules of this Court in respect to the contents of such a brief, in that it does not contain a reference to the statute under which jurisdiction is invoked, the date upon which the judgment of the trial court was entered, the date the opinion of the Appellate Court was rendered and

filed, and where cited in the Federal Reporter and the transcript of record; the date judgment of the Appellate Court was entered, and citation to the transcript of record showing such entry; nor the date of the denial of the petition for a rehearing and citation to the transcript of record showing such denial. The brief does not contain a concise statement of the case, including all that is material to the consideration of the questions presented. There are no specifications of errors.

Notwithstanding the lack of these essentials, we are assuming that counsel for petitioner are relying upon the statement contained in their petition to supply the defects in the brief in so far as it may be said to do so. For the purpose of aiding the Court in so far as we can, we set forth a statement which presents the essential facts, with appropriate references to the record, as follows:

Statement.

The bankrupt Orelia B. Hamaker is the wife of the bankrupt William Nelson Hamaker. They intermarried in 1915 [R. 65], and ever since have been husband and wife. (Hereinafter, for the sake of brevity, we will refer to the bankrupt William Nelson Hamaker as the husband, and the bankrupt Orelia B. Hamaker as the wife.) Prior to the year 1933 the wife was the owner of real property situated in the City of York, County of York, State of Nebraska, the description of which is set forth at page 9 of the transcript of record. She acquired this property by deed from her father. On March 30, 1933, the wife deeded said Nebraska property to her brother, John I. Boyer [R. 17]. Prior to 1934 the wife acquired as her separate property oil land in Fresno County, California. On February 6, 1934, said property was transferred to

John I. Boyer, the wife's brother. The deed to the Nebraska property was recorded in the county recorder's office in York County, Nebraska, October 27, 1934 [R. 35]. The deed to the Fresno County property was recorded in the office of the county recorder of Fresno County during the year 1934 [R. 35].

At the time of the marriage the husband was the owner of some oil paintings which were hanging in the rooms of the Los Angeles Athletic Club, and gave those paintings to the wife as a wedding present [R. 38]. There was no change of possession and nothing done so far as the physical situation was concerned to indicate the transfer, nor was the Los Angeles Athletic Club notified that the wife was the new owner.

On November 8, 1927, the husband and wife executed and delivered to the Bank of Italy (name afterwards changed to Bank of America), a promissory note in the sum of $12,500, which note was dated November 8, 1927 [R. 39]. The note was secured by a deed of trust, and the amount of the claim was a deficiency upon the promissory note for $12,500, after the foreclosure of the trust deed given to secure the note [R. 39]. The claim filed in the wife's bankrupt estate was represented by a judgment in favor of A. G. Brown, assignee of the bank, which showed that the judgment was rendered July 22, 1936, for $7918.49 and $307.55 attorneys' fees [R. 74]. The claim in the husband's estate was for the deficiency, and no judgment was taken therefor against him [R. 39].

The Bank of America, at the time of the transfer of the property to the wife's brother, Boyer, was a secured creditor. The record is silent as to whether or not at that time the security held by the bank was ample and sufficient to pay the indebtedness of the bankrupts to it. No evidence whatsoever on that subject was produced by the trustee. Prior to the delivery of the deed on March 30, 1933, conveying the Nebraska property to Boyer, and prior to the time of the conveyance of the Fresno County property to Boyer, the bankrupts were indebted to him in a substantial amount [R. 44, 46, 69, 71]. There is no evidence whatsoever to the contrary. The property known as the Nebraska property, and the Fresno County property, were transferred to Boyer in payment of the indebtedness [R. 46, 65, 69, 72, 75]. There is no evidence in the record in conflict with that which showed that the property was transferred to Boyer in payment of the bankrupt's indebtedness to him. The deeds to the two properties were made and delivered without any agreement that the property was to be other than Boyer's absolute property. There was no agreement between the bankrupts, or either of them, and Boyer, that he was to hold the property in trust for the bankrupts or either of them [R. 55, 69, 73].

Late in the year 1939 Boyer talked to his attorney about giving the Nebraska and Fresno properties to his sister (the wife) and stated that he did not propose to give it to her so that her creditors could get it [R. 73]. His attorney told him that he could either set up a spend-

thrift trust for her or she could go through bankruptcy, and she went through bankruptcy [R. 73].

To summarize the facts, it appears that in 1927 the husband and wife gave to the bank a note secured by a deed of trust, for a pre-existing indebtedness of the husband and others to the bank [R. 70]. In 1929 the husband borrowed seven thousand dollars, or more, from Boyer, none of which had been repaid up to 1933 [R. 69]. In 1933 the wife, joined by the husband, conveyed to Boyer the Nebraska property in payment of the indebtedness [R. 69]. Thereafter, in 1934, the Fresno property was conveyed to Boyer in payment of additional indebtedness [R. 69]. The deeds were recorded, respectively, in the office of the county recorder of York County, Nebraska, and Fresno County, California, in 1934. Six years elapsed between the date of the deed to the Nebraska property, and more than five years from the recording of the deeds, to the filing of the wife's bankruptcy, November of 1939 [R. 3], and more than three years elapsed between the date of the judgment against the wife, July 22, 1936 [R. 74], and the filing of the wife's bankruptcy. The proceedings to reopen the two bankrupt estates were commenced on October 28, 1943, as to the wife, and on November 4, 1943, as to the husband [R. 2, 3]. Within a few days of four years had elapsed from the date of the wife's adjudication. Boyer died on February 21, 1943, more than three years after the wife's bankruptcy and the conveyance of the Nebraska property from Boyer to the wife.

Argument.

Petitioner attacks the opinion and judgment of the United States Circuit Court of Appeals for the Ninth Circuit because he says that that Court has based its ruling upon an erroneous conception of the applicable law of California and the decisions of its courts of last resort. He also makes the claim, unwarranted we say, that the decision is in conflict with a decision of the Seventh Circuit in the *Matter of Breitling,* 133 Fed. 146. We shall now proceed to demonstrate that the opinion of the Circuit Court is fully sustained by California law.

The record shows, without contradiction, that the two parcels of real property affected by the referee's turnover order, and the subject matter of this litigation, were the separate property of the wife. One parcel is located in the State of Nebraska; the other in the State of California. In California there are but two kinds of debts in which married couples are involved—the debts of the husband and the debts of the wife. Debts of the community are not recognized as such but are debts of the husband.

> *Grolemund v. Cafferata,* 17 Cal. (2d) 679-688, 111 P. (2d) 641; (certiorari denied) 314 U. S. 612, 86 L. Ed. 492; 62 S. C. 87.

Prior to the execution of the note and trust deed to the Bank of Italy (the predecessor of the Bank of America), the husband was indebted to it. The wife owed it nothing. The note and deed of trust were executed by the husband and wife to the Bank to secure to it the payment of the husband's pre-existing debt. The property conveyed by the deed of trust as security was community property. In order for the trust deed to be effective it

was necessary that it be executed by both the husband and wife.

California Civil Code, Sec. 172(a).

The execution of the trust deed and note did not and could not have the effect of converting the debt of the husband into the debt of the wife. The most that could be said of that transaction is that it made the community property transferred by the deed of trust the primary security for the payment of the husband's debt.

Section 171 of the California Civil Code expressly exempts the separate property of the wife from liability for the payment of the debts of the husband.

Street v. Bertolone, 193 Cal. 751-753, 226 Pac. 913.

So far as the record discloses, the wife was perfectly solvent at the time the transfers were made to her brother in 1933 and 1934. In the absence of proof to the contrary, solvency is presumed. At the time of said transfers the wife was not indebted to anyone. The fact that she had executed the note to the Bank of Italy jointly with her husband, which note was secured by a deed of trust on community property, did not make her liable for the payment of the debt secured by the trust deed. Before she could be said to have been indebted to the Bank, it was necessary for the petitioner to have shown that the property upon which the trust deed was a lien was not of sufficient value to pay the indebtedness in full. Without such showing, the Bank was not her creditor. The trans-

fer of the properties did not remove from the reach of the Bank specific property out of which it had the right to satisfy its claim.

Norton v. Blenkiron, 138 Cal. App. 66, 31 P. (2d) 807;

Hibernia etc. v. Belcher, 4 Cal. (2d) 268, 274, 48 P. (2d) 681;

Bank of Italy etc. Assn. v. Bentley, 217 Cal. 644, 20 P. (2d) 940: (certiorari denied) 290 U. S. 659, 54 S. C. 74, 78 L. Ed. 571.

The record fails to show that any injury resulted to any creditor of the wife because of the transfer of the two properties to her brother. The claim that the transfers were fraudulent is not sufficient. It must also be shown that there was a resulting injury to a creditor.

Union Central etc. v. Flicker (C. C. A. 9th), 101 Fed. (2d) 857; (certiorari denied) 307 U. S. 641, 83 L. Ed. 1522;

Nicholdson v. Nesbitt, 4 Cal. App. 585-8.

The law of California, in effect at the time the transfers of the two properties by the wife to her brother were made, is found in Sections 3439, 3441 and 3442, California Civil Code. The rights of the petitioner to question the transfers are limited to the right which the Bank of America (the sole creditor of the wife) at the date of her bankruptcy had.

Remington on Bankruptcy (5th Ed.), Vol. IV, Sec. 1591, p. 310.

Under California law, the Bank of America—a secured creditor at that time, and the holder of a note and deed of trust executed by the husband and wife and a lien upon

community property—could not question the validity of the transfers, notwithstanding that such transfers may have been the result of fraudulent intent. The opinion of the Circuit Court of Appeals to the effect that the Bank was not a creditor of the wife is, for the reasons we have stated above, fully sustained by California law and authority.

The assertion by the petitioner that the opinion is in conflict with the decision of the 7th Circuit in the *Matter of Breitling,* 133 Fed. 146, is wholly unwarranted. There is no similarity between the facts in the two cases, nor are the questions of law involved either the same or analogous.

We respectfully submit that this Court should deny the petition for the writ.

JAMES J. BROZ,
Attorney for Respondents.

FRANK H. LOVE,
A. L. ABRAHAMS,
On the Brief.

Service of the within and receipt of a copy thereof is hereby admitted this.....day of August, A. D. 1945.

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